

How Will This Process Enhance Existing Protection of Aquaculture Waters?

- Existing Section 9 VAC 25-260-270 – no plans to revise this section

9 VAC 25-260-270. Shellfish buffer zones; public hearing.

Before acting on any proposal for a project that, while not contravening established numeric criteria for shellfish waters, would result in condemnation by the State Health Department of shellfish beds, the board shall convene a public hearing to determine the socio-economic effect of the proposal. Such proposals include discharge of treated waste or proposals to otherwise alter the biological, chemical or physical properties of state waters. If the Marine Resources Commission or the Virginia Institute of Marine Science certify that the project would have no effect on the shellfish use now and in the foreseeable future, the board may dispense with such hearing.

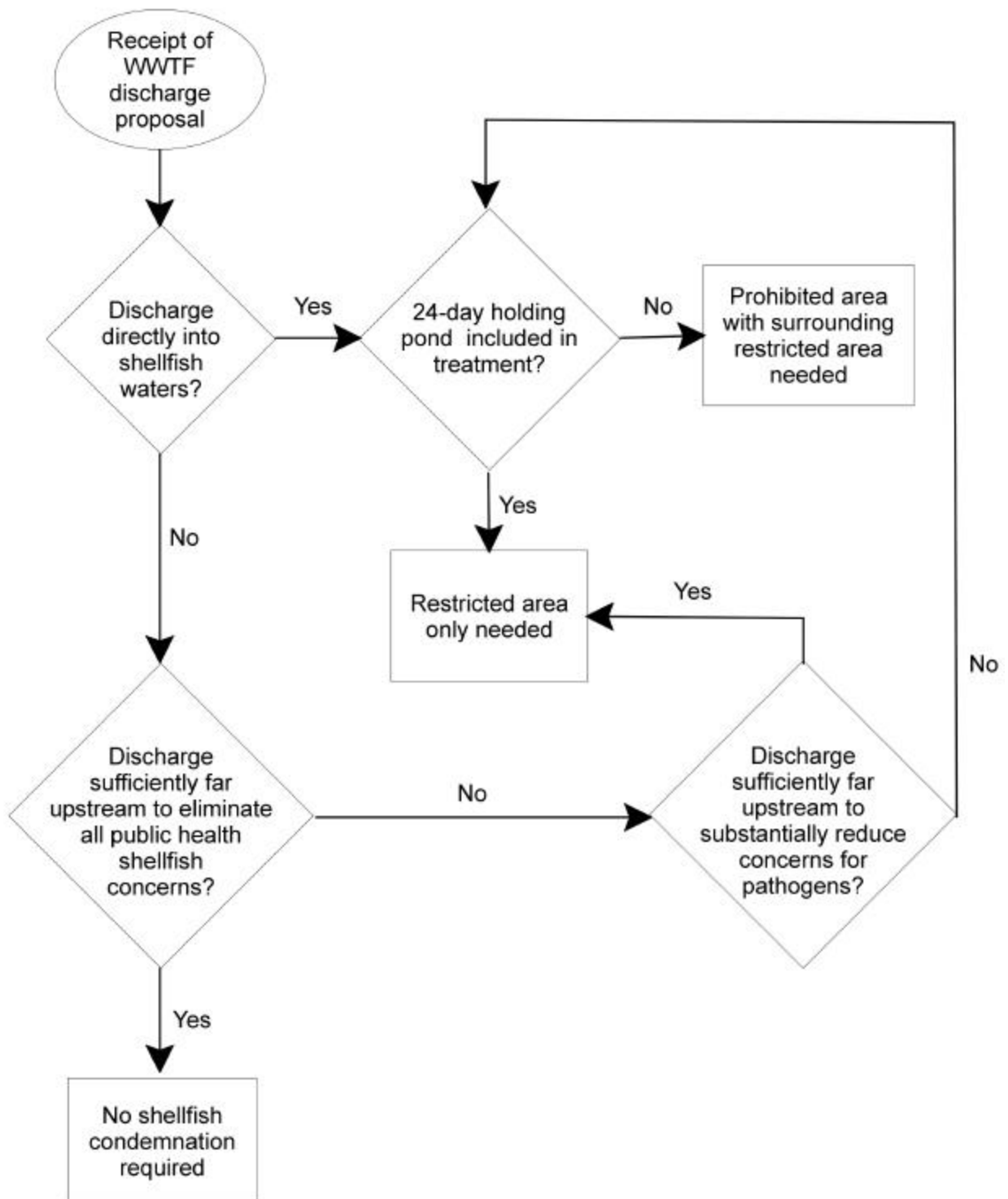
When the board finds that the proposed project will result in shellfish bed condemnation and if the condemnation will violate the general standard, it shall disapprove the proposal.

- Shellfish Waters – all tidal waters along Eastern Shore
- Decision on Condemnation – see attachment with flow diagram and definitions prepared by VDH
- Decision re: Effect on Shellfish Use Now **and** in the Foreseeable Future – certification from VMRC based on a protocol that looks at only an immediate and continuing detrimental effect on shellfish propagation, growth or harvesting
- Decision on Violation of General Standard – State Water Control Board makes this decision, as well as decision whether to issue discharge permit

DISCUSSION

- The existing regulatory process described above protects shellfish waters in several ways:
 - 1) Provides the Board with an additional means to secure information about the effect on shellfish resources of a proposed discharge; and,
 - 2) Requires disapproval of the proposal if it would lead to a shellfish bed condemnation that will violate the general standard. Generally speaking, the proposal will likely be disapproved if it has an effect on shellfish use now and in the foreseeable future.
- Objective of this rulemaking: provide additional protection for high-quality waters suitable for aquaculture as follows:
 - 1) Proposed dischargers into Aquaculture Enhancement Areas would be required to conduct an analysis of alternatives to a discharge to these waters; currently such an analysis is only encouraged. New permit guidance will be needed.
 - 2) In cases where a proposed discharge is to waters where there is no effect on shellfish now and in the foreseeable future, section 270 does not apply. This rulemaking could establish the authority for the Board to disapprove a proposal if there is an alternative to a discharge that produces less environmental impact.

Division of Shellfish Sanitation Evaluation of Waste Water Treatment Facility (WWTF)
consideration of need for a condemnation surrounding the outfall 4/16/2008



Definitions to accompany DSS evaluation of WWTF flow chart dated 4/16/2008

Condemned Shellfish Area

The legal term used by the *Code of Virginia* to indicate any shellfish growing area that is closed to the direct harvest of shellfish for human consumption. This term pertains to both prohibited and restricted waters.

Prohibited Shellfish Area

This is a term that is used by the National Shellfish Sanitation Program (NSSP) to indicate that shellfish from this area cannot be used for human consumption. It is the most severe type of condemnation. It is used for severely contaminated waters and for waters that have not been evaluated for shellfish consumption.

Restricted Shellfish Area

This is a term used by the NSSP for less contaminated waters to indicate that shellfish from this area can be “relayed” (moved) to approved (clean) waters under a permit system, to purge themselves of microbiological contaminants. The waters must be above 50° F, the shellfish must be overboard for a minimum of 15 days, and the permit is issued jointly by VMRC and VDH.

Shellfish Waters

DSS uses a designation that has been in place since the early 1980’s. These waters include all tidal waters on the Eastern Shore and all tidal tributaries to the Chesapeake Bay, including waters downstream of the following locations in major Chesapeake drainage basins:

- Potomac River tributaries – Mathias Point upstream of the US 301 bridge
- Rappahannock River – Tappahannock Bridge (US 360)
- York River – upstream border of the Town of West Point
- James River – a line extending due north from the northernmost tip of Hog Island
 - Note that DEQ permit writers asked for an indication of which waters in the James River could receive a WWTF discharge of less than 1 MGD without impacting shellfish waters. Waters above a line connecting Swanns Point on the south bank to Glass House Point on the north bank (upper end of Jamestown Island) can receive a discharge of less than 1 MGD and not require evaluation by DSS as part to the NPDES permit writing process.